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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,896	02/12/2002	Brian Keith Walker	0091/00406	2382

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Cherskov & Flaynik
The Civic Opera Building
20 North Wacker Drive
Chicago, IL 60606

EXAMINER

JASTRZAB, KRISANNE MARIE

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/049,896

Applicant(s)

WALKER, BRIAN KEITH

Examiner

Krisanne Jastrzab

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 1-3, these claims are found to be vague and indefinite because they include references to "the device" within the body of the claims, which references are improper because the claimed device cannot be defined by itself.

With respect to claim 4, this claim is found to be vague and indefinite because it recites method phraseology, however, the claim is an apparatus claim and thus no further structural limitations have been set forth as required.

With respect to claim 5, the use of "low" is found to be vague and indefinite because it is unclear as to what would actually constitute "low". This claim is further found to be vague and indefinite because it attempts to further limit the exhaust gas which has not been positively provided structurally. Clarification is required.

With respect to claim 7, this claim is found to be vague and indefinite because it recites a method limitation which fails to properly further limit the apparatus claim from which it depends. Clarification is required.

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With respect to claim 8, "the fluid" lacks proper antecedent basis, as does "the step of subjecting the fluid to a controlled atmosphere" and "the controlled atmosphere", as this step was never previously recited.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ebisawa et al., U.S. patent No. 5,139,676.

Ebisawa et al., teach an apparatus for treating water having a heating zone followed by a filtration means, which filters out any bacteria/pathogens still present in the water before releasing it. See column 2, lines 30-65 and column 3, lines 17-25.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-7 and 9-12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Aikus et al., U.S. patent No., 5,498,396.

Aikus et al., teach a method and apparatus for sterilization of a fluid solution wherein the solution is heating within a confined zone for a predetermined period of time necessary to achieve sterilization. The solution is pressurized by a sterile gas treated by an antimicrobial filtration means, which moves the solution through the system. The water is held within the confined heating zone by control actuated valve means, and a

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slight positive pressure is maintained in the system. See column 4, lines 5-65, column 5, lines 40-46, and column 6, lines 6-56.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aikus et al., as applied to claims 1-3, 6-7 and 9-12 above, and further in view of Cummings U.S. patent No. 6,490,866 B1.

Cummings teaches the known and expected use of the exhaust gases from combustion processes for supplying heat in sterilizing heat exchangers for the purpose of environmental conservation. See column 2, lines 53-60.

It would have been obvious to one of ordinary skill in the art to utilize the known and expected configuration of conserving the heat energy of the products of combustion for supplying the heat to a heating system such as that taught in Aikus et al., because

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Cummings clearly teaches the efficacy of this type of heat supply within the area of fluid heat sterilization.

Claims 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aikus et al., as applied above.

Aikus et al., clearly teach controlling the flow and the atmosphere in the disclosed fluid treatment system, as well as the desire to achieve sterilization of that fluid, thus it would have been obvious to one of ordinary skill in the art to determine the optimal formula for fluid flow through the system taking into account all variable parameter, such as the coldest possible inlet temperature, to ensure that sterilization is always achieved.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Krisanne Jastrab
Primary Examiner
Art Unit 1744

February 7, 2005